Court, appellant and cross-appellee in said Circuit Court of Appeals, respectfully prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Fifth Circuit entered on December 4, 1944 in the above cause, affirming the judgment of the District Court of the United States for the Northern District of Georgia entered on March 13, 1944.

OPINIONS BELOW

The opinion of the District Court is reported in 54 Fed. Sup. 185, and is also printed in the Record (R. 170-7.)* The majority opinion of the Circuit Court of Appeals and the dissenting opinion of Judge Waller, as yet un-reported, are printed in the record. (R. 196-204).

BASIS OF JURISDICTION

Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925. (28 U.S.C. 347-a).

The opinion of the Circuit Court of Appeals for the Fifth Circuit was filed December 4, 1944; petition for rehearing was filed December 22, 1944, and was denied January 5, 1945. Application for stay of mandate pending this petition for certiorari was made and order staying the mandate for thirty days was entered January 10, 1945.

QUESTION PRESENTED

The question presented is:

* The same questions of law and fact were involved in this case and the case of *Broughton* vs. *Atlantic Company*, and the cases were tried together in the District Court and by stipulation consolidated on appeal for hearing, briefs, argument, decision and record, and the record references made in this petition and brief refer to the record in the Broughton case.

When a bona fide dispute exists between employer and employees as to unpaid minimum wages and overtime compensation claimed under the Fair Labor Standards Act of 1938, (29 U.S.C. 201, et seq.) the dispute relating entirely to past transactions and involving both a question of law as to whether the work done by the employees brings them within the coverage of the Act, and also a question of fact as to the number of overtime hours worked by the employees, may the parties, in order to avoid litigation, settle their differences by a bona fide agreement of accord and satisfaction?

STATUTE INVOLVED

The statute involved is the Fair Labor Standards Act of 1938 (29 U.S.C., Sections 201 et seq.). Pertinent provisions thereof are set out in the appendix.

SUMMARY STATEMENT OF THE MATTER INVOLVED

Respondents, employees and former employees of petitioner, made claims for unpaid minimum wages and overtime compensation under the Fair Labor Standards Act of 1938. Most of the claimants had been employed in the manufacture, handling and sale in Atlanta, Georgia of ice, some of which was used for the refrigeration of railroad cars moving in interstate commerce. When these claims were made and when they were settled, as hereinafter related, petitioner was in good faith contesting with the Administrator of the Wage-Hour Division of the Department of Labor the application and coverage of the Act to this part of its business, and the question was undetermined. (R. 109). Believing that these employees were not within the coverage of the Act, petitioner did not keep the detailed records of hours worked as provided by the Act, and when these claims were made several years later, neither employ-

er nor employees knew the number of overtime hours, but most of the employees made claim for sums far in excess of what later appeared from the best estimate that could then be made of what would have been due them if they were entitld to the benefits of the Act. (R. 109-111).

Petitioner denied all liability on the ground that the nature of the work done by the employees did not entitle them to the benefits of the Act, and further contended that even if the Act was applicable to these employees, they had not worked as many overtime hours as they claimed. (R. 99-109-111). Almost all of the employees had placed their claims in the hands of attorneys who were pressing for settlements. In an effort to avoid litigation, the claims were in good faith settled by written agreements. Where claimants were represented by counsel —and most of them were—the settlements were made through and approved in writing by the attorney. (R. 127-135). Substantial amounts were paid as the consideration for these agreements, and thirteen of the original plaintiffs in these cases were paid considerably more than was actually due them. (R. 125-126). Afterwards, the respondents repudiated their agreements, and without returning or tendering the amounts received under the settlement contracts, and with the attorney who negotiated and approved these agreements as leading counsel, instituted this litigation.

Respondents set up the agreements of accord and satisfaction as a bar to the claims. A jury trial was demanded. (R. 15-17).

The Court charged the jury that if a bona fide dispute existed between the parties and it was in good faith settled as recited in the agreements of accord and satisfaction, that these agreements would bar a recovery for the plaintiffs. (R. 160). The jury was unable to agree and a mistrial was declared. Later the

District Judge granted respondents motion for judgment, holding that regardless of the parties' desire to adjust a bona fide dispute between themselves without litigation, any settlement of a claim for unpaid minimum wages and overtime compensation under the Fair Labor Standards Act was not binding as contrary to public policy. (R. 170-177). The Circuit Court of Appeals for the Fifth Circuit affirmed this decision, Judge Waller dissenting. (R. 196).

REASONS FOR GRANTING THE WRIT

1. The Court below has decided an important question of Federal law which should be decided by this Court.

2. The writ should be allowed in order that this Court may settle a much litigated question of importance in the administration of the Fair Labor Standards Act wherein the decisions of the United States Courts of Appeal and various state courts are in hopeless conflict. The decision of the United States Circuit Court of Appeals in this case is in direct conflict with the decision of the Court of Appeals of Georgia, a state court of last resort, in the case of David vs. Atlantic Company, 69 Ga. App. 643; 26 S.E. (2d) 650. The several Circuit Courts of Appeal entertain views which conflict in one way or another with each other. See Fleming vs. Warshawsky (7 C.C.A.) 123 Fed. (2d) 622; Guess vs. Montague (4 C.C.A.) 140 Fed. (2d) 500; Rigopoulos vs. Kervan (2 C.C.A.) 140 Fed. (2d) 506.

The Fair Labor Standards Act has national application and is fruitful of litigation throughout the nation in both State and Federal courts, and unless this Court finally determines the public policy underlying that Act with respect to the bona fide settlement of disputes, agreements made by the parties effecting such settlements which are accepted as legal and enforceable in some jurisdictions will be held to be void and unenforceable

in other jurisdictions. Much confusion has already arisen and can only be settled by an authoritative pronouncement from this Court on the question.

3. The Court below has decided a Federal question in conflict with the applicable decisions of this Court, and has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

4. A special and important reason why the writ should be granted is the uniform practice of trial courts and the Wage-Hour administrator to encourage and approve the settlement of controversies arising under the Fair Labor Standards Act. An authoritative pronouncement should be made so that this practice may be discontinued if illegal.

WHEREFORE, it is respectfully submitted that there is here presented a proper occasion for the exercise of the supervisory power of this Court, and that the writ of certiorari to review the judgment of the Circuit Court of Appeals for the Fifth Circuit should be granted.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

1.

THE IMPORTANCE OF THE QUESTION IN THE ADMINISTRATION OF THE FAIR LABOR STANDARDS ACT.

A special and important reason why the writ should be granted in this case is in order that this court may settle a much litigated question of importance in the administration of the Fair Labor Standards Act. The question here presented is broader than the questions presented in Brooklyn Savings Bank vs. O'Neil, No. 445, and in Dize vs. Maddrix, No. 554, now before this court. Here is presented a comprehensive question, the answer to which will furnish positive guidance to the courts and the administrator in all cases. Here there was a bona fide dispute both of law and of fact, and the parties, choosing to settle rather than to litigate, made agreements of accord and satisfaction for reasonable and substantial yet arbitrary amounts. Some original plaintiffs were paid more than they could have recovered under the Act. They voluntarily dismissed their actions. Others were paid less. They repudiated their contracts and sued.

It is the uniform practice of all trial courts, so far as we are informed, to permit and approve the settlement of cases when bona fide disputes exist. Some courts indeed even suggest and encourage settlements to the points of insistence. The administrator apparently also aids in the making of compromise adjustments. See Rigopoulos vs. Kervan, 140 Fed. (2d) 506-508; 1939 Wage-Hour Division Annual Report, pages 60-61; 1940 Report pages 87-90.

See also the dissenting opinion of Judge Waller (R. 203).

It is important to the hundreds of thousands of employers and employees subject to the Act and to the courts where thousands of these cases are pending that an authoritative pronouncement be made on the question presented, in order that they may know if fair and reasonable settlements may be made where there is an honest controversy, or if every case must be litigated to a conclusion.

2.

THE LAW AND PUBLIC POLICY FAVOR SETTLEMENT OF DOUBTFUL CLAIMS

The policy of the law is to encourage settlements and to discourage parties from resorting to litigation. The courts support agreements as far as legally possible which have for their object the peaceful settlement of doubtful rights, and anything that prevents the compromise of claims encourages litigation and is contrary to public policy. C.M.&St.P. vs. Clark, 178 U.S. 353; Bofinger vs. Tuyes, 120 U.S. 198; Re: Prudence Co. 98 Fed. (2d) 559; Kehoe vs. Commissioner, 105 Fed. (2d) 552; 11 Am.Jur. 249.

> "Decisions * * * by this court * * * show beyond all doubt that parties may adjust their own controversies in their own way, and that when they do so voluntarily, and with full knowledge of their rights and all the circumstances, no appeal lies to the courts to review their mutual decision. Courts cannot make contracts for parties; and if parties understandingly contract to adjust a controversy between them in a particular way, and actually execute the contract, they are both bound to regard the controversy as at an end." (Savage vs. United States, 92 U.S. 382, 388-389).

A controversy concerning a question of law alone is sufficient. St. Louis vs. U. S., 92 U.S. 462.

Any dispute which can be the subject of an action or a suit may be the basis of a compromise and its settlement will afford a consideration therefor. 11 Am. Jur. 250.

The law and public policy favor settlements and discourage litigation to so great an extent as, on occasion, to allow the settlement of minor criminal offenses, this being considered less injurious to the public interest than litigation. 3 Wharton's Criminal Law, Sec. 1877, p. 2079; Glidewell vs. Murray, 124 Va. 563; 98 S.E. 665.

3.

THE FAIR LABOR STANDARDS ACT DOES NOT EXPRESSLY NOR BY NECESSARY IMPLICATION FORBID SETTLEMENTS

The statute not only contains no provision, forbidding settlements, but was purged of such a provision before its enactment. The section so stricken which might have indicated a Congressional intent to outlaw settlements read as follows:

> Section 20 (b). Any contract, agreement, understanding, condition, stipulation, or provision binding any person to waive compliance with any provision of this Act or with any regulation or order thereunder shall be null and void."

Senate Reporter No. 844, 75th Congress, First Session, 1937. Clearly, therefore, Congress did not intend for this statute to nullify the right to compromise claims.

Had Congress intended to restrict in any way the right to settle claims under the Fair Labor Standards Act, it would have expressly stated the restrictions, just as it did in the Longshoremen's and Harbor Worker's Compensation Act. (33

U.S.C.A. 901). Here Congress expressly enacted "No assignment, release, or commutation of compensation or benefits due or payable * * * except as provided * * * shall be valid * * * ." (33 U.S.C.A. 916). The fact that a similar provision as quoted above was stricken clearly shows the Congressional intent not to affect the existing general law.

> "The Fair Labor Standards Act contains no language outlawing a settlement contract between employer and employee where the contract is based upon a bona fide dispute between them as to the facts of the employee's claim and as to the law applicable thereto." David vs. Atlantic Company, 69 Ga. App. 643; 26 S.E. (2d) 650. See also Gangi vs. D. A. Schulte, 53 Fed. Sup. 844.

4.

PUBLIC POLICY

It is contended that controversies arising under the Fair Labor Standards Act constitute an exception to the universally recognized rule not only allowing but encouraging parties to settle their controversies. It is said that this exception exists because of public policy. Public policy, however, is nothing more nor less than the policy of the law and to determine what it is, we must go to the constitution, statutes, and the decisions of the courts. It is a question of law and not of fact. 50 Corpus Juris 857.

Statutes are not to be construed as isolated fragments of law, but as parts of a connected homogeneous system. They are not to be understood as effecting changes in the common law and rules established by judicial decision beyond that which is clearly indicated by express terms or necessary implication. They are presumed to be enacted by the Legislature with full

knowledge of the existing condition of the law, and with reference thereto, and will not be construed at variance therewith unless the intention to override such rules is clearly manifested. Ross vs. Jones, 89 U.S. (22 Wall). 576-592. Globe & Rutgers vs. Draper, (9 C.C.A.) 66 Fed. (2d) 985. Swartz vs. Inspiration Gold Mining Co., 15 Fed. Sup. 1030. Scharfeld vs. Richardson, 133 Fed. (2d) 340. 59 Corpus Juris 1038.

Congress must be presumed to have legislated with the general state of the law in mind. If it had intended to make a drastic departure from traditional legal principles, an express statement to this effect would have been made. The elimination of Section 20 (b), quoted above, is the highest evidence of the Congressional intent not to disturb the general law regarding settlements. Hecht Co. vs. Bowles, 321 U. S. 321-329. Scripps-Howard vs. Commissioner, 316 U. S. 4-13, et seq.

The right of private contract is one of the greatest liberties enjoyed by a citizen, and the most important function of courts is to maintain and enforce contracts rather than to enable parties to escape from their obligations on the pretext of public policy. 12 Am. Jur. 670.

It is the inherent and inalienable right of every man freely to deal or refuse to deal with his fellow man. Competent persons ordinarily have the utmost liberty of contracting, and their agreements voluntarily and fairly made will be held valid and enforced in the courts. 12 Am. Jur. 641.

It is inconceivable that Congress in enacting the Fair Labor Standards Act meant to repeal the equitable defense of estoppel, the common law defenses of accord and satisfaction, and of res adjudicata, and the statutory defense of limitations. Estoppel has been held a valid defense under the Fair Labor Standards Act. Mortenson v. Western Light & Telephone Co., 42 Fed. Sup.